



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/681,748

10/09/2003

Frederick A. Parker

PARK3054/FJD

8134

23364 7590 02/18/2009

BACON & THOMAS, PLLC

625 SLATERS LANE

FOURTH FLOOR

ALEXANDRIA, VA 22314-1176

EXAMINER

LEE, KEVIN L

ART UNIT

PAPER NUMBER

3753

MAIL DATE

DELIVERY MODE

02/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FREDERICK A. PARKER

Appeal 2008-2080
Application 10/681,748
Technology Center 3700

Decided: ¹ February 18, 2009

Before WILLIAM F. PATE, III, LINDA E. HORNER, and MICHAEL W.
O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DECISION ON REQUEST FOR REHEARING

This is a response to Appellant's Request for Rehearing filed on December 30, 2008 pursuant to 37 C.F.R. § 41.52(a)(1) (2008). Such Requests must state with particularity points believed to have been misapprehended or overlooked by the Panel in rendering the Decision.

The Appellant's first point raised in the Request is directed to the Panel allegedly taking a position of equivalency between a control valve and a pressure regulator. The Panel found Balazy describes pressure regulation as an alternative to on/off control valves. Accordingly, the Panel never alleged equivalence, and whether a control valve and a pressure regulator are equivalent is not relevant to Balazy's teaching that either control valves or pressure regulation may be used to control the gas flow. Additionally, Balazy is good for what it describes, i.e., that while a control valve is preferred, as an alternative, a pressure regulator may be utilized. A reference is not limited to its preferred embodiment, but must be evaluated for all of its teachings, including its teachings of non-preferred embodiments. *In re Burckel*, 592 F.2d 1175, 1179 (CCPA 1979).

Appellant further argues that there are hundreds if not thousands of different types of control valves. While this may be true, it is irrelevant to the disclosure of Balazy which expressly teaches a system that anticipates Appellant's claims 1 and 11.

The Appellant's second point raised in the Request is directed to finding of facts 3-7. The Appellant alleges that findings of fact 3-7 are generalities. This is not the case. Findings of facts 3-7 are definitions. We give claim terms the broadest reasonable interpretation in light of the specification as it would be understood by one of ordinary skill in the art.

When the specification is silent as to what the ordinary and customary meaning of a claim term is, then we look to the prior art for guidance as how one of ordinary skill in the art would understand the claim term in light of the specification.

The Appellant's third point raised in the Request appears to confuse claim construction with anticipation. As we explained in the decision, we first construe the claims, then compare the properly construed claims to the prior art. When we construed the claims, we gave the claims their broadest reasonable interpretation in light of the specification as it would be understood by one of ordinary skill in the art. As such, we did not merely apply a "broad construction" as the Appellant alleges. Next, we compared the properly construed claim to the prior art. As such, we did not, as Appellant alleges, apply a "free hand" in order to find no error in the Examiner's rejection of the claims.

The Appellant's Request for Rehearing has been granted to the extent that we have reviewed our prior decision, but it is denied with respect to making any changes thereto.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REHEARING DENIED

Appeal 2008-2080
Application 10/681,748

LV:

BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314-1176